

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: BAIR HUGGER FORCED AIR MDL No.: 15-md-02666 (JNE/FLN)
WARMING PRODUCT LIABILITY
LITIGATION

This Document Relates To:

REX HARTZEL,

Plaintiff,

Civil Action No.: 16-CV-01338-JNE-FLN

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS

NOW COMES Plaintiff, Rex Hartzel, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 637], and by and through undersigned counsel submits this, his Response to Defendants' Motion to Dismiss, and would respectively show the Court the following:

1. In May of 2015, Mr. Rex Hartzel contacted undersigned counsel regarding an infection and subsequent treatment that he experienced, allegedly caused by the use of a Bair Hugger patient warming device during an orthopedic surgery.
2. Counsel worked to obtain medical records and billing records to move forward with the case. Those records indicate that a Bair Hugger device was used during the original surgery.
3. On May 18, 2016, counsel filed the current action to comply with what was identified as the applicable statute of limitations deadline for the relevant claim.

4. A Plaintiff Fact Sheet was sent to Mr. Hartzel on November 4, 2016. Mr. Hartzel confirmed by phone that he had received the Plaintiff Fact Sheet.
5. During a phone conversation on November 30, 2016, Mr. Hartzel stated that he had sent the Plaintiff Fact Sheet to Kennedy Hodges. Despite Mr. Hartzel's assertion that it was sent, a Plaintiff Fact Sheet for this case was never received.
6. Following the last phone conversation with Mr. Hartzel on November 30, 2016, numerous phone calls by Kennedy Hodges staff on the following dates have gone unanswered, and voice messages requesting a call back were not returned:
 - December 15, 2016
 - December 16, 2016
 - January 30, 2017
 - February 9, 2017
 - February 15, 2017
 - February 23, 2017
 - February 24, 2017
7. Additionally, letters were sent to Mr. Hartzel on the following dates requesting additional information to complete the Plaintiff Fact Sheet and advising that his case would be subject to dismissal by the Court if the Plaintiff Fact Sheet was not completed:
 - January 21, 2017
 - February 23, 2017

- March 20, 2017
 - May 10, 2017
 - June 13, 2017
 - July 13, 2017
8. Attempts to locate Mr. Hartzel, including an Accurant background search performed on February 28, 2017, have resulted in no new contact information or update on his current status.
9. As a result, counsel has not been able to obtain the necessary information to complete the Plaintiff Fact Sheet for this claim.

Accordingly, undersigned counsel requests that the current action not be dismissed with prejudice and that Mr. Hartzel be given a reasonable amount of time to contact counsel to provide the necessary information to cure any alleged deficiencies with the Plaintiff Fact Sheet and continue the case.

Dated: August 10, 2017

KENNEDY HODGES, LLP

By: /s/ David W. Hodges
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that on August 10, 2017 a copy of the forgoing instrument was served on all parties via the Court's electronic filing system.

By: /s/ David W. Hodges
David W. Hodges